



State of Idaho

## DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

September 23, 2004

Anthony Alosi  
4129 North 4100 West  
Mackay, ID 83251

RECEIVED

SEP 27 2004

Department of Water Resources  
Eastern Region

### CERTIFIED MAIL

RE: **Notice of Violation**  
**Order to Cease and Desist Diversion of Water**  
**Violation of Idaho Code §42-351(1)**

Dear Mr. Alosi:

The Idaho Department of Water Resources (IDWR) has determined that you are in violation of Idaho Code §42-351(1) for the diversion of water without a valid water right. The violation in question is the construction of a pond on the Sutter Ditch, which is a diversion ditch from the Big Lost River. The unauthorized pond is located a short distance below the Sutter Ditch headgate and within the NE1/4 SE1/4 of Section 6, Township 6 North (T6N), Range 25 East (R25E).

IDWR visited this diversion with the Big Lost River watermaster on April 21, 2004, after receiving a complaint from the Big Lost Irrigation District. IDWR sent you a Pending Notice of Violation on April 28, 2004, advising you that there were no valid water rights for the construction of the pond at the above referenced location, and that the pond constituted an illegal use of water pursuant to Idaho Code §42-351(1), as well as a criminal violation of Idaho Code §18-4301, and §18-4306, interference with ditches and injury to ditches. IDWR advised you to fill in the pond and repair the ditch to its original condition within fourteen days of your receipt of the Pending Notice of Violation. Your attorney, Pat Brown, contacted IDWR within this fourteen-day period and informed IDWR that you would remove the pond and repair the ditch. The watermaster of Water District 34 and the Big Lost River Irrigation District manager have both recently notified IDWR that the pond has not been removed. Water delivery records submitted to IDWR by the watermaster indicate that water from the Big Lost River was diverted to the Sutter Ditch by the Big Lost Irrigation District from June 9 through June 13, 2004, for the purpose of providing water to valid priority water rights on the ditch below the location of your pond. A total of 44.1 cubic feet per second was delivered to the Sutter Ditch during this period.

Your failure to remove the pond is considered a violation of I.C. §42-351(1). Idaho Code §42-351(3) provides that IDWR may take action pursuant to Idaho Code §42-1701B, for the illegal diversion of water. Under Idaho Code §42-1701B, the director of IDWR may commence an administrative enforcement action to obtain a remedy for a violation and seek a civil penalty of


fifty dollars (\$50.00) per one-tenth (0.1) cubic feet per second of water or part thereof diverted per calendar day, up to a maximum penalty of fifty thousand dollars (\$50,000) per year for water illegally used or diverted.

Pursuant to Idaho Code, §42-1701B, IDWR requires that the following action be taken:

1. Fill in the pond on the Sutter Ditch located in the NE1/4 SE1/4 of Section 6, T6N, R25E, and repair this section of the ditch to the condition that existed prior to construction of the pond, on or before November 1, 2004.
2. Pay an agreed civil penalty in the amount of twenty-two thousand, fifty dollars (\$22,050), which is the maximum penalty authorized by law for using waters of the State of Idaho without obtaining a valid water right, based on the amount of water diverted through the pond in 2004. The civil penalty shall be due and payable to IDWR on or before October 25, 2004.

If you object to any provision in this notice, you have the opportunity to schedule a compliance conference to discuss the violation with IDWR. Your written request must be received at this office within fourteen (14) days of receipt of this notice. Send written requests to Tim Luke at the address on the letterhead. Failure to comply with the requirements of this notice will be cause for IDWR to initiate a civil enforcement action through the Attorney General in district court.

Respectfully,



Tim Luke  
Manager, Water Distribution Section

cc: Robert Duke, Water District 34 Watermaster  
Bob Shaffer, Big Lost River Irrigation District  
John Homan, Idaho Deputy Attorney General  
Glen Saxton, IDWR Administrator  
Gary Spackman, IDWR Water Allocations Bureau Chief  
✓ IDWR Eastern Region